

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

#### CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

*Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2010-13 as issued by Governor Brewer. (See the text of the executive order at 16 A.A.R. 1183, July 2, 2010.) The Governor's Office authorized the notice to proceed through the rulemaking process on July 8, 2010.*

[R10-112]

#### PREAMBLE

**1. Sections Affected**

Article 13  
R20-4-1301  
R20-4-1302  
R20-4-1303  
R20-4-1304  
R20-4-1305

**Rulemaking Action**

New Article  
New Section  
New Section  
New Section  
New Section  
New Section

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 6-123(2)

Implementing statute: A.R.S. §§ 6-126, 6-991.01, 6-991.02, 6-991.03, 6-991.04, 6-991.07

**3. A list of all previous notices appearing in the *Register* addressing the proposed rule:**

Notice of Emergency Rulemaking: 16 A.A.R. 839, May 21, 2010

Notice of Rulemaking Docket Opening: 16 A.A.R. 1509, August 13, 2010 (*in this issue*)

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Richard Fergus  
Address: 2910 N. 44th St., Suite 310  
Phoenix, AZ 85018  
Telephone: (602) 771-2800  
Fax: (602) 381-1225  
E-mail: RFergus@azdfi.gov

**Secondary Contact:**

Name: Lauren W. Kingry  
Address: 2910 N. 44th St., Suite 310  
Phoenix, AZ 85018  
Telephone: (602) 771-2800  
Fax: (602) 381-1225  
E-mail: LKingry@azdfi.gov

**5. An explanation of the rule, including the agency's reason for initiating the rule:**

On July 7, 2008, Governor Napolitano signed SB 1028 enacting amendments to existing statutes and adding A.R.S. Title 6, Chapter 9, Article 4 (A.R.S. §§ 6-991 through 6-991.08), creating the licensed profession of loan originator. The provisions of HB 2143 from the 49th Legislature, 1st Regular Session enlarge upon those statutes, and harmonize them with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116, "the S.A.F.E Act"). The new state statutes recite that the fees specified in these new Sections shall be determined by the Superintendent. New Section R20-4-1304 fulfills that mandate.

The rest of the new Sections establish critical elements of the licensing program authorized by SB 1028 and revised by HB 2143. R20-4-1301 states the scope of the new Article of rules for the program.

R20-4-1302 outlines the pre-licensure course of study loan originators must complete to be licensed.

R20-4-1303 details the specifics of the statutory financial responsibility requirements that begin with the original application for a license.

Finally, R20-4-1305 describes the process for loan originators to challenge information that the superintendent enters into the nationwide mortgage licensing system and registry.

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Department has not reviewed, and does not propose to rely on, any study as an evaluator or justification for the proposed rules.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

**A. The Department of Financial Institutions**

**Benefit:** The Department will realize no immediate economic benefit from this rulemaking. Licensing fees collected under the present statutory scheme accrue to the Financial Services Fund, established by A.R.S. § 6-991.21. Under that provision, at a point in the future, the Department will realize the benefit of those funds when sums are appropriated by the legislature for use in supervising and regulating loan originators. That future, contingent benefit arises not under these rules but as a result of possible legislative appropriations. The Department expects to realize an indirect economic benefit from these rules because they will facilitate communication with licensees and applicants about how to satisfy the demands of the new licensing program.

**Cost:** The Department will incur administrative and overhead costs to collect, account for, and remit the licensing and other fees. Likewise, the Department will incur costs to operate the licensing program including evaluating applications and other submissions, as well as documentation of loan originators' pre-licensure education units.

**B. Other Public Agencies**

There are no known costs or benefits to other public agencies.

**C. Private Persons and Businesses Directly Affected**

**Benefit:** Loan originators will benefit from this rulemaking because it establishes licensing fees that are statutorily mandated to be determined by the Superintendent. They will also benefit from the rules' detailed information about the qualifications for licensure.

The state's real estate and mortgage lending education and training providers will benefit from the demand for their services created by the new program. They will also have the benefit of the rules' detailed information about what training and education will be required for loan originators.

**Cost:** Loan Originators will bear the cost of licensing fees that have not been previously required. Loan originators are required by law to be employed by licensed mortgage brokers, mortgage bankers, or consumer lenders. The employer has the option of paying the loan originators' licensing fees.

**D. Consumers**

**Benefit:** Arizona consumers will benefit from trained, educated, accountable, licensed, and regulated loan originators.

**Cost:** There is a possibility that some mortgage lenders will pay the cost of their loan originators' licensure and pass those costs on to consumers through higher fees.

**E. Private and Public Employment**

**Benefit:** By implementing the legislative mandate to license loan originators these new Sections will allow loan originators to remain employed in their chosen profession.

Notices of Proposed Rulemaking

**Cost:** The Department cannot estimate the costs of this rulemaking to public and private employment with any precision or accuracy.

**F. State Revenues**

**Benefit:** The Department's current projection is that 5,000 to 8,000 loan originators will apply to be licensed in the first year of the licensing program

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Richard Fergus  
Address: 2910 N. 44th St., Suite 310  
Phoenix, AZ 85018  
Telephone: (602) 771-2800  
Fax: (602) 381-1225  
E-mail: RFergus@azdfr.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No oral proceeding is scheduled. The Department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this notice, under the provisions of A.R.S. § 41-1023(C). Send requests for an oral proceeding to the Department personnel listed in item 4. The Department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in item 4, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this notice, unless the Department schedules an oral proceeding.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

There is no material incorporated by reference in these rules.

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS**

**ARTICLE 13. ~~RESERVED~~ LOAN ORIGINATORS**

Section

<u>R20-4-1301.</u>	<u>Scope of Article</u>
<u>R20-4-1302.</u>	<u>Course of Study to Qualify for Licensure</u>
<u>R20-4-1303.</u>	<u>Financial Responsibility</u>
<u>R20-4-1304.</u>	<u>Fees</u>
<u>R20-4-1305.</u>	<u>Practice and Procedure</u>

**ARTICLE 13. ~~RESERVED~~ LOAN ORIGINATORS**

**R20-4-1301. Scope of Article**

This Article applies to:

1. All loan originating activities of any person licensed under Arizona law as a loan originator, and
2. The conduct of any applicant for a loan originator license.

**R20-4-1302. Course of Study to Qualify for Licensure**

**A.** The Superintendent shall, under the authority of A.R.S. § 6-991.03(B)(1), approve a course of study that includes only those courses reviewed and approved by the Nationwide Mortgage Licensing System pursuant to A.R.S. § 6-991.03(E) and (F) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).

**B.** An applicant for a loan originator license shall satisfactorily complete a course of study by:

1. Attending at least 20 hours of instruction, and

Notices of Proposed Rulemaking

2. Receiving a passing grade of not less than 75 percent correct answers on both the national and Arizona state exam required by A.R.S. § 6-991.07 and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 U.S.C. 5101 through 5116).

**C.** A pre-licensure course of study shall include 20 hours of instruction in the following areas:

1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours.
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Three hours.
3. Non-traditional mortgage product lending standards: Two hours.
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency, and the obligations between principal and agent, and state privacy laws: Four hours.
5. The remaining eight hours should be comprised of instruction in the obligations between principal and agent, the statutory and regulatory laws governing loan originators, arithmetical computations common to mortgage lending, principles of real estate lending, the purpose and effect of mortgages, deeds of trust, and security agreements, the terms and conditions of conforming and non-conforming residential mortgages, real estate appraisal and the principles of appraisal independence.

**D.** A continuing education course of study shall include eight hours of instruction each year in the following areas:

1. Federal law and regulation, including the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), good faith estimates, federal privacy laws, fair lending laws including the Equal Credit Opportunity Act ("ECOA") and the Fair Credit Reporting Act ("FCRA"): Three hours.
2. Business ethics, including fraud, consumer protection laws, and fair lending practices: Two hours.
3. Non-traditional mortgage product lending standards: Two hours.
4. Arizona real estate and mortgage lending law, including loan origination and processing, Arizona law relating to agency, and the obligations between principal and agent, and state privacy laws: One hour.

**R20-4-1303. Financial Responsibility**

An applicant for a loan originator license shall demonstrate financial responsibility, as required by A.R.S. § 6-991.03, by either:

1. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and paying to the Superintendent, for deposit into the Mortgage Recovery Fund, the sum of \$100 at the time of filing an original or a renewal application pursuant to A.R.S. § 6-991.03(B)(6); or
2. Depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(4) and depositing with the Superintendent a bond as specified by A.R.S. § 6-991.03(B)(6).

**R20-4-1304. Fees**

Loan Originator program fees:

1. Initial application fee (non-refundable) pursuant to A.R.S. § 6-126(A)(34): \$350.
2. Initial license fee (prorated according to the number of quarters remaining until the next annual renewal) pursuant to A.R.S. § 6-126(B): \$150.
3. Annual renewal fee pursuant to A.R.S. § 6-126(C)(12) or fee for change to inactive status pursuant to A.R.S. § 6-126(C)(13): \$150.
4. Transfer license to new employer fee pursuant to A.R.S. § 6-126(A)(35): \$50.
5. Change of residence address fee pursuant to A.R.S. § 6-991.04(J): \$50.
6. Examination fee pursuant to A.R.S. § 6-991.07(E): the amount charged by the vendor.
7. Late renewal fee pursuant to A.R.S. § 6-991.04(E): \$25 per day after the filing deadline.

**R20-4-1305. Practice and Procedure**

Loan originators shall follow the practice outlined in 20 A.A.C. 4, Article 12 (Rules of Practice and Procedure Before the Superintendent) for challenging information the Superintendent enters into the nationwide mortgage licensing system and registry pursuant to A.R.S. §§ 6-991.03(K) and 6-991.04(M).